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REPORTS

NOTES OF THE WEEK

Solicitors at Quarter Sessions

As a general rule, only barristers appear as advocates at courts of quarter sessions, and authority is quoted at 21 *Halsbury* (2nd edn.) 703 upholding an order of justices that in future barristers only should be heard provided that at least four attend, even though no barrister had previously attended the court except upon special retainer.

It is within the discretion of a court of quarter sessions to decide whether solicitors shall practice before them or not. In some areas where members of the bar do not usually attend it is convenient for everyone concerned that solicitors should be allowed to appear, but these are exceptional, and so long as the two branches of the legal profession remain separate it is no doubt desirable that the general practice should be what it is, subject to exceptions.

In the *Liverpool Daily Post*, Lord Justice Morris, in his capacity of chairman of Caernarvonshire quarter sessions, is reported as announcing that solicitors will continue to have the same right of audience in the court as barristers. Careful consideration had been given to representations on behalf of the Wales and Chester Circuit and also on behalf of the solicitors in Chester and North Wales. It was felt that the relations between the two branches of the profession in all that appertained to the work of the court had been entirely harmonious at all times.

Verminous Heads

Years ago, when we saw many ragged and dirty children about the streets, we were not surprised to hear of cases in the courts concerning neglected children whose heads were infested with vermin. Today with a generally higher standard of living and with increased school services we do not expect to hear much of this kind of thing, yet we read in *The Birmingham Post* of a solicitor for the Dudley corporation, informing a magistrates' court that last year 1,300 schoolchildren were found to have verminous heads.

The solicitor, who was prosecuting two mothers, said this matter had become a serious problem. He added that since 1950 the daughter of one of the defendants had been examined 40 times.

The power of the local authority to cause schoolchildren suspected of being verminous to be examined is contained in s. 54 of the Education Act, 1944, and by subs. (6) of that section if, after a pupil has been cleansed in accordance with the section, his person or clothing is again found to be infested while he is still attending school the parent is liable to be fined if the condition is found to be due to neglect by the parent.

It is not reasonable to assume in every case that the presence of vermin is due to neglect, and that is certainly not the attitude of local authorities. It may happen by an unfortunate accident to anyone. It is not usually difficult to remedy, and what is thoroughly blameworthy is the continuance of such a condition through neglect to take simple measures or to follow suitable directions. Children can suffer great discomfort and some injury to health when this is prolonged.

Dismissal or Discharge ?

When we read in a newspaper that a case was dismissed but the defendant was ordered to pay costs or compensation, or, in the familiar words "dismissed on payment of costs," we sometimes wonder what exactly was the adjudication of the court. If the case was dismissed on the ground that it was not proved against the defendant the court had no power to order the defendant to pay costs or compensation or anything at all. If, however, the court found the case proved but decided to discharge the defendant absolutely the adjudication was not a dismissal and should have been described as absolute discharge, in which case the court could further order the defendant to pay costs, damages or compensation. The entry in the court register should be that prescribed by r. 26 of the Magistrates' Courts Rules. This corresponds to the entry formerly made of "Dismissed P.O. Act" when a case was dismissed, after a finding of guilt, under the Probation of Offenders Act. The distinction between a decision that the defendant has not been found guilty and a conviction not accompanied by any penalty is of some importance.

First things first

The Birmingham Post reports, in its issue of January 8, 1957, that the city's Accident Prevention Council has decided to press the Government to abolish purchase tax on crash helmets for motor cyclists. The council felt that many more people would buy helmets if the tax were taken off.

There can be no doubt that suitable crash helmets minimize the risk of serious injury to motor cyclists. Equally there can be no doubt that the persons who should be most concerned to avoid such injuries are those who ride motor cycles, and it seems to us that it ought not to be necessary to offer special inducements to them to persuade them to take such a reasonable precaution. Motor cycles are not cheap to buy and we imagine that the present amount of the purchase tax on a crash helmet is not a large sum compared with the cost of a motor cycle. We should have thought, therefore, that any normally sensible person who was contemplating buying a motor cycle, or being regularly a passenger on one, would have considered that the cost of a crash helmet, even with the purchase tax included, was a necessary part of his expenditure. It seems strange to us if it has to be accepted that motor cyclists as a group are so feckless and careless of their own safety that they will not buy a crash helmet unless its price is reduced by the abolition of the purchase tax. As we have said, their safety is primarily their own consideration and responsibility.

Sale of Stray Dog by Police

Our P.P. 2 at p. 13 *ante* has prompted a correspondent to send us a press report of a county court action in which the original owner of a dog unsuccessfully sued the person who had bought the dog from the police. The report is from *The Dover Express and East Kent News* of August 10, 1951. The facts were simple and not in dispute. An Alsatian dog disappeared from its owner's house while not wearing a collar, was found in the street, and taken to the police as a stray. Through a misunderstanding between the owner and his nephew, its loss was not reported to the police, and the owner then left Dover for some days. At the end of the statutory period of seven clear days, the defendant bought the dog from the R.S.P.C.A. kennels. On his return, the owner got to hear of this and asked the defendant if she would give up the dog. She refused, and the action in Dover county court was the result.

The purchaser's defence was that she had acquired a good title to the dog in buying it from the R.S.P.C.A. acting as agents for the police under the authority of an agreement between the Dover branch of the Society and the Watch Committee. Counsel for the plaintiff maintained that this agreement was bad because it should have been made between the chief officer of police and the R.S.P.C.A., the Watch Committee having no power to enter into such an agreement. He also submitted that the dog was not seized on the highway by a police officer and that a general routine was put in force while the Act only gave power to exercise a discretion in regard to each individual dog.

In his judgment, the learned Judge said that he agreed with the contention that the agreement was made between the wrong parties, but that he was satisfied that the chief constable of Kent had authorized a superintendent at Dover to do in his division all the acts authorized to be done by the chief constable under the Dogs Acts. The report of the judgment does not deal with the contention that the dog had not been seized on the highway by a police officer. We feel sure, however, that the court was aware of s. 2 of the Dogs (Amendment) Act, 1928, which substituted a new s. 4 of the Dogs Act, 1906. This enacts that where a finder brings a dog to a police station and states that he does not desire to keep it, the police officer at the station shall treat the dog as if it had been seized by him in pursuance of s. 3 of the principal Act.

In concluding his judgment, the learned Judge said he thought the crux of the matter was the wording of the Act which did not say that "the chief officer of police may sell the dog," but, "may cause the dog to be sold." It was only to be expected that a chief constable could do nothing more than give a general instruction, and the evidence was that the dog was sold under such general instructions. In his opinion the dog was properly sold.

We are glad to have our views on this subject reinforced by a decision in an actual case.

Two wrongs don't make a right

A motorist who considers, possibly with very good reason, that another motorist has driven badly and caused inconvenience to him and/or damage to his car may feel tempted to take upon himself the duty of bringing the offender to justice. But he must not, in doing so, himself commit offences against the Road Traffic laws. This was pointed out to a defendant at Haywards Heath, according to a report in the Brighton *Evening Argus* of January 8. The defendant was fined £10 for dangerous driving, with £7 3*s.* 4*d.* costs. He was said to have chased and stopped a car which had been in collision with his car. The other driver did not stop after the collision so the defendant followed him through Haywards Heath, got in front of him and stopped in such a way that a slight collision occured. Such action on the defendant's part was clearly unnecessary, and it is always a likely result of such a chase that other road users who have no concern with the incident may be inconvenienced or endangered. There was presumably nothing to stop the defendant from taking the number of the other car and reporting the incident promptly to the police, as indeed he was required to do by s. 21 of the Road Traffic Act, 1930, if he had any reason to suppose that any damage had been caused to the other vehicle. The chairman of the bench said to the defendant "We feel that you probably were provoked, but you have no right to take the law into your own hands"; and motorists must remember that this applies to Road Traffic offences as to other offences. The citizen's duty to assist in the due enforcement of the law does not extend to authorizing, far less requiring, him himself to commit offences in order to perform that duty.

Position of Parked Provincial Cars

The short account of the appeal to quarter sessions at Salisbury, which we mentioned in a footnote at p. 17, *ante*, refers to a byelaw which had been proposed by the city council for the parking place in Salisbury market. According to *The Times*, the deputy town clerk said that in 1955 the council wanted the byelaws to provide that cars should be parked side by side, or as directed by the corporation toll collectors. This, said the deputy town clerk, was refused by the Home Office, who said the parking must be left as previously, and the following dialogue followed: "The Recorder—so if an attendant goes to a motorist and says, 'You must park your car there,' the man in the car can say 'You go to blazes.' Mr. Robert Hughes, for the appellant: 'Yes he could say, The Home Secretary is behind me'."

We doubt whether what was here stated was completely accurate. The Home Office are not likely to have said that "parking must be left as previously—side by side." Parked cars can be side by side at right angles to some defining feature such as a kerb or fence, facing that mark or facing away from it; they can be parallel to such a mark, in single file or several files, or they can be in

herring-bone formation. The model byelaws recognize various possible formations; the choice is one of practical convenience, and we have never known the Home Secretary or an earlier confirming authority to say that this or that method must be chosen—though local objection by those affected might, we suppose, cause him to rule out the local authority's first choice. No confirming authority, however, could properly entertain a byelaw in the form quoted in *The Times*: that cars must be parked in such and such a way, " or as directed by the toll collectors." It is a little surprising, indeed, to read that at the present day such a byelaw had even been proposed. It can perhaps be argued that s. 68 of the Public Health Act, 1925, as amended by s. 16 (4) of the Restriction of Ribbon Development Act, 1935, went the wrong way to work, in giving local authorities power to control parking places by byelaw. In the light of experience some local authorities may think parking would be better controlled at discretion exercised *ad hoc*. A parallel can be suggested in the wide discretion given for some purposes to police officers in uniform by the Road Traffic Act, 1930. However, Parliament has not done the thing that way, and doing it that way might not please local authorities (the great majority) who do not maintain their own police, and would, moreover, be inappropriate to parking places not in streets. For parking places elsewhere than in streets whatever control is needed will be by other officials than police, and we cannot conceive that Parliament would grant a discretion in the form suggested to any persons other than police in uniform—not, that is to say, to toll collectors or other municipal officials. The essence of control by byelaw, which is what Parliament established in 1935, is that the motorist who takes the trouble to look at the byelaw can see for himself what is the lawful method. Not only is he entitled (in the recorder's words) to say " Go to blazes " to an official who tells him to do otherwise: he can (and should) tell the official in appropriate language that he does not intend to break the law.

Disorder in Libraries

A library is one of the last places in which we should expect to find hooliganism. People go there to borrow or return books or to read in a quiet reading-room or reference department. They have a right to undisturbed use of these facilities, and they usually have no cause for complaint, while staff can generally count on doing a not uninteresting job in peace.

Unhappily, there are a few exceptions. It is reported that in some of the libraries of the Liverpool corporation there have been intrusions by " Teddy-boys," and that some of these, and even some children, have offered violence and threats to members of the staff. This has caused apprehension, and the corporation is being asked to consider the appointment of able-bodied attendants for the purpose of dealing with these undesirables.

It must not be imagined that this kind of thing is common, either in Liverpool or elsewhere, but where it exists it needs to be suppressed promptly and firmly. Perhaps the employment of some ex-policemen might have a good effect, and we are confident that if cases of assault, threats or malicious damage reach the courts the magistrates will know how best to deal with them.

The Solicitors' Journal

Earlier this month the *Solicitors' Journal* celebrated the centenary of its foundation. The occasion, which was suitably marked by the publication of a special centenary issue of that journal, was also made the subject for a reception at Law Society's Hall. Here, a distinguished gathering representing Bench, Bar and the Solicitors' Profession, heard the Lord Chancellor, Viscount Kilmuir, propose the toast of the Solicitors' Profession and the Solicitors' Journal, in most felicitious terms—to which Mr. P. Asterley Jones, editor, responded in a most thoughtful speech on behalf of the Journal, and a vice-president of the Law Society, Mr. I. D. Yeaman, responded on behalf of the Profession.

To the *Solicitors' Journal* on this auspicious occasion in its history we extend our warmest congratulations, and our best wishes for its future.

GUARDIANSHIP LEGISLATION AND THE ILLEGITIMATE CHILD

By DAVID BULMER, *Barrister-at-Law*

In a previous article in this review we examined certain developments in the law relating to illegitimate children (*see* 120 J.P.N. pp. 486-7). However, since the publication of that article two cases have been reported, the first casting some doubt on an opinion expressed therein, and the second confirming our view on one of the points dealt with in that article. Both cases are concerned with the illegitimate child and his place in the Guardianship of Infants Acts, 1886-1925, and mark a further weakening, both substantially and procedurally, in the already slight legal ties existing between an illegitimate child and its father.

It may be recalled that in the previous article we expressed the view that s. 1 of the Guardianship of Infants Act, 1925 (hereinafter called the " 1925 Act "), which makes the welfare of the child the first and paramount consideration in disputes as to the custody of children, applies to disputes between the parents of illegitimate, as well as legitimate, children. We came to the conclusion that where the mother of an illegitimate child claims the custody of her child from some person or body other than the child's father, the primary consideration is the wishes of the mother, but that if the other party to the dispute is the child's father then s. 1 of the 1925 Act applies making the first and paramount consideration the welfare of the child. The difference lies in the degree of importance which the court should attach to the welfare of the child as opposed to the wishes of one of its parents. That this difference is not merely a matter of words will be understood by anyone who has studied the decision in *Re J. M. Carroll* (1931) 95 J.P. 25 in all its various stages. For this distinction we relied upon the judgment of the Master of the Rolls in *Re A (an infant)* [1955] 2 All E.R. 202. This case concerned an application by the father of an illegitimate child under s. 9 of the Law Reform (Miscellaneous Provisions) Act, 1949, for the child to be made a ward of court, and for him (the father) to be given the care and control of the child. The child's mother resisted the application, her desire being to have the child legally adopted through a society in whose care the child was at the time of the dispute. Harman, J., directed that the infant should

remain a ward of court during her minority or until further order, and that she should be committed to the care and control of the father's brother and his wife. The mother appealed against this order to the Court of Appeal. It was argued on her behalf that, "when the balancing considerations are looked at, the mother's wishes should, as a matter of law, have prevailed, since, as a matter of law, the natural mother, even though she does not herself seek the company and custody of the child, has a right to choose who will bring it up unless there emerged prevailing considerations of essential importance to the child" (p. 204). In rejecting this argument as being altogether too wide the Master of the Rolls distinguished between the present facts and those in such cases as *Barnardo* v. *McHugh* (1891) A.C. 388, and *Re J. M. Carroll* (*supra*). In the latter cases the dispute was between the mother of the illegitimate child on the one hand and some person or body other than the child's father on the other hand, and no doubt in that type of dispute the wishes of the mother should be given primary consideration unless to accede to her wishes would be detrimental to the child's welfare in some very serious and important respect. However, in the present case the dispute was between the parents of an illegitimate child, and this raised the question of whether the same degree of importance should be attached to the wishes of the mother. In noting that it should not, the Master of the Rolls used these words (p. 204):

> ". . . The present case seems to me to be different. This is a case, in the first place, of the invocation of the parental duties and the power of the court as regards a ward of court, and it is not in doubt that in every such case, by statute and well-established principle, the paramount consideration must be the welfare of the child."

We stated in our earlier article that the statutory provision referred to in the passage we have just quoted was s. 1 of the 1925 Act, a view supported by a footnote in the All England Report of the case (*see* p. 204), and we welcomed the decision as another step in the illegitimate child's struggle towards equality before the law. However, it is now necessary to reconsider the whole position in the light of the more recent decision of the Court of Appeal in *Re G (an infant)* [1956] 2 All E.R. 876.

Like *Re A (an infant)*, *Re G (an infant)* involved an application by the father of an illegitimate child for an order that the child be made a ward of court and for directions as to custody, care and control, and access. At the time of the dispute the child was in the care of a woman who was also looking after a legitimate child of the father. Wynn-Parry, J., refused the father's application to have the child made a ward of court and ordered that the infant be handed over to the mother. The father appealed to the Court of Appeal contending that the child should have been made a ward of court and that some provision for access should have been made in his favour, but he did not appeal against that part of the Judge's order directing that the child be handed over to its mother. The Court of Appeal disallowed the appeal and the leading judgment of Lord Evershed, M.R., serves to emphasize the weakness of the legal ties between an illegitimate child and its father. In particular, the Master of the Rolls quotes, with apparent approval, a passage from the judgment of Wynn-Parry, J., which contains this opening sentence (p. 878):

> "The authorities also make it clear that I ought to give primary consideration to the wishes of the mother."

Moreover, later on in his judgment the Master of the Rolls himself says (p. 879):

> ". . . it is not to be forgotten that the position of the so-called putative father under our law is widely different from the position of the father of a child born in lawful wedlock . . . and it may be stated broadly (and accurately too, I think) that in the case of an illegitimate child the limit of the obligation of the father will be to make financial provision for the child in order to relieve other people, and particularly the general public, of such an obligation. The father has no such obligation to bring up the child as has a lawful father. The only parent in that respect which the law regards as responsible for the child is the mother. That being so, I think that the view which the courts generally take in regard to the interests of a child of lawful wedlock, *viz.*, that it is in the child's interests to know both parents, is not at any rate by any means necessarily applicable in the case of an illegitimate child."

The last few lines of the passage just quoted indicate another weakening in the relationship between an illegitimate child and its father; the father's claims to access (as opposed to custody) are apparently far weaker than are those of the father of a legitimate child. However, it is the implied recognition by the Master of the Rolls that in disputes as to the custody of an illegitimate child the primary consideration is the wishes of the mother, even when the other party to the dispute is the child's father, which is of most interest so far as this article is concerned. Clearly it is no longer permissible to say as we said in our earlier article that s. 1 of the 1925 Act applies to such disputes making the first and paramount consideration the welfare of the child. Possibly the section may apply but it is impossible to be more definite having regard to the doubts cast upon our interpretation of the judgment of the Master of the Rolls in *Re A (an infant) (supra)* by his later judgment in *Re G (an infant) (supra)*.

The other decision reported since our earlier article, and this time one which confirms a view we expressed therein, is the decision of Roxburgh, J., in *Re C. T. (an infant)* [1956] 3 All E.R. 500. In this case the putative father of two illegitimate children applied to a court of summary jurisdiction for the custody of the children under the Guardianship of Infants Acts, 1886-1925 (as extended by the Administration of Justice Act, 1928, s. 16). The magistrates considered that they had jurisdiction to entertain the applications but dismissed them on their merits whereupon the father appealed to the Chancery Division of the High Court. Like the justices, Roxburgh, J., would have dismissed the applications on their merits, but the substantial part of his judgment is directed to the question of whether a putative father is entitled to use this particular form of procedure. Readers may recall that this depends upon whether the title "father" when used in s. 16 of the Administration of Justice Act, 1928, should be read so as to include the father of an illegitimate child as well as the father of a legitimate child. Roxburgh, J., reached the conclusion that it should not, and accordingly dismissed the applications for want of jurisdiction. Having examined the relevant authorities on the point the learned Judge came to the opinion that, *prima facie*, the titles "father" and "mother" when used in a statute belong only to those who have become so in a manner known to the law, and consequently do not include the father or mother of an illegitimate child. Whilst recognising that this *prima facie* meaning could be departed from if a compelling reason for doing so could be found in the statute itself, his lordship did not consider that the Guardianship of Infants Acts, 1886-1925, or s. 16 of the Administration of Justice Act, 1928, indicated any compelling reason for extending the title "father" from a *de jure* father to a putative father.

Thus far the decision in *Re C. T. (an infant)* does no more than confirm the view which we expressed in our earlier article, and it is now quite clear that a putative father seeking to obtain possession of his child should apply in the Chancery Division of the High Court under s. 9 of the Law Reform (Miscellaneous Provisions) Act, 1949, for the child to be made a ward of court, and for the care and control of the child to be entrusted to him. However, fortunately for persons interested in this particular branch of the law relating to parent and child, Roxburgh, J., also considered the position of the mother of an illegitimate child within the framework of the Guardianship of Infants Acts, 1886-1925. After examining several provisions contained in this legislation, the learned Judge was only able to find one which indicated any compelling reason for extending the title "mother" to include the mother of an illegitimate child. This was the provision contained in s. 5 (2) of the 1925 Act which empowers a "mother" to appoint by deed or will a guardian for her child after death. His lordship pointed out that there was a very convincing reason for giving the title "mother" in this provision its extended meaning since the schedule to the 1925 Act, which related to consents to marriage, referred to the guardian of an illegitimate child appointed by the mother, and there was no way in which she could make such an appointment except under this sub-section. The decision in *Re A, S* v. *A.* (1940) 164 L.T. 230 is relevant on this point, and whilst it is true that the schedule to the 1925 Act has been repealed, it has been replaced by a provision in sch. 2 to the Marriage Act, 1949, which raises the same difficulty.

More particularly, Roxburgh, J., considered whether the machinery provided by s. 5 of the Guardianship of Infants Act, 1886 (as extended by s. 3 (2) of the 1925 Act) had any application to illegitimate children. It will be recalled that s. 5 of the 1886 Act empowers the "mother" of an "infant" to apply for an order giving her the custody of the infant either in the High Court, or in a county court, or, since 1925, in a magistrates' court. Section 3 (2) of the 1925 Act empowers any of these courts to supplement the order as to custody with an order that the "father" shall make some contribution towards the maintenance of the "infant". His lordship reached the conclusion that it was almost impossible to believe that these provisions were intended to embrace illegitimate children since this would bring them into conflict on several points with the Bastardy Acts. His lordship summarized some of the possible points of conflict in this way (pp. 507-8):

> ". . . Under the Bastardy Acts only a single woman, as defined either by the Acts or judicial interpretation, can obtain an order for maintenance in respect of an illegitimate child—there is no limitation at all of that sort in the Guardianship of Infants Acts. Secondly, the application for an affiliation order and consequential maintenance has to be made during a period which is limited —there is no limitation in the Guardianship of Infants Acts. Thirdly, evidence of paternity has to be corroborated even in the face of admission—there is nothing of that sort in the Guardianship of Infants Acts. Lastly (and this, perhaps, is the least important) an appeal lies, not to the High Court as under the Guardianship of Infants Acts, but to quarter sessions."

And later on in the course of his judgment Roxburgh, J., deals more specifically with the position of the mother of an illegitimate child (p. 510):

> ". . . I have indicated the difficulty which I feel in believing that s. 5 of the Guardianship of Infants Acts, 1886, as amended, can possibly have been intended to extend to a mother of an illegitimate child, having regard to the conflict to which that would give rise between the provisions of that section and the provisions of the Bastardy Acts."

Thus, although the point was not directly in issue on the facts of the case itself, *Re C. T. (an infant)* provides strong persuasive authority for saying that the only mother entitled to take proceedings under s. 5 of the Guardianship of Infants Act, 1886 (as extended) is the mother of a legitimate child, and that the only "infant" contemplated by the section is a legitimate infant.

By way of conclusion we should like to pose this question—Having regard to the fact that the family unit often comes into existence without the sanction of the law, is it morally justifiable to distinguish between the children of a lawful union and those of one not recognized by the law when the union itself breaks up? At present the legal principles governing the disposal of the children in such an eventuality probably differ, the courts being entitled to attach more importance to the child's welfare if he is fortunate enough to be the child of a union recognized by the law. Furthermore, although this is not so important, the procedure through which the disposal of the children may be arranged differs, in particular the summary procedure provided by the Guardianship of Infants Acts being available only in the case of the child of a lawful union. However justifiable this distinction may be as a matter of legal construction, we consider it ignores the change in attitude towards the whole problem of illegitimacy, and that the time has come for Parliament to recognize, through legislation, that we have in our midst two types of family unit, both of which may contain children, and to provide so far as it is practically possible, a domestic code common to the children of both types of union. There would be no practical difficulty in providing that when a *de facto* family breaks up, the courts, in dealing with the disposal of the children, should pay first and paramount consideration to their welfare, and, indeed, it would be difficult to provide a summary procedure for dealing with such disputes. Again, in the sphere of family inheritance something could be done to avoid the hardship suffered by the applicant in *Re Makein, decd.* [1955] 1 All E.R. 57 (*see* 120 J.P.N. 486). That the Judges themselves have not been slow to improve, where possible, the lot of the illegitimate child is apparent from several recent decisions. Thus, for example, in *Galloway* v. *Galloway* [1955] 3 All E.R. 429, the House of Lords held that the words "children the marriage of whose parents is the subject of the proceedings" in s. 26 (1) of the Matrimonial Causes Act, 1950, include both illegitimate and legitimate children with the result that it is possible for the High Court to deal with the custody of an illegitimate child, who has not been legitimated by the subsequent marriage of his parents, if one of his parents should later institute proceedings for divorce or nullity of marriage, or for judicial separation. Again the words "members of the tenant's family" in s. 12 (1) (*g*) of the Rent and Mortgage Interest (Restrictions) Act, 1920, have been said to include illegitimate, as well as legitimate, children with the result that an illegitimate child is probably entitled to take a transmitted tenancy under this provision in the same way as his legitimate brother: *see Brock* v. *Wollams* [1949] 1 All E.R. 715. But the Judges, fettered as they are by statute and precedent, cannot possibly remould the law relating to parent and child in the way we have suggested. That must be the task of Parliament.

UNORTHODOX DWELLINGS

Our contemporary *The Church Times* published at the beginning of December, 1956, an illustrated article about a collection of " static caravans " in the urban district of Chislehurst and Sidcup—to adopt a phrase occurring about the same time in a leading article in the *Manchester Guardian*. The photographs showed a scene of squalor, and were said to have been taken at some risk to the photographer. The inhabitants of the encampment are resentful and suspicious, and, according to *The Church Times*, the only persons who can safely venture among them are church workers. Strangers might doubtless be impelled by offensive curiosity; worse still, by a desire to uproot the occupants and place them, willy nilly, in more wholesome surroundings, which would either be an institution or some place where they were obliged to pay a higher rent. It is true that not all the denizens of such a place are content to stay there; always there are some who would gladly go into decent homes, even at a higher rent, if decent homes could be provided. But it is part of the sad problem of getting rid of these blots upon the countryside (and sometimes upon a town) that many families have grown habituated, and have the same reluctance to be moved away as the families often found in slum tenements in towns.

The *Manchester Guardian* speaks of this as a " fairly new feature in our social life," but in fact the problem is no new one. Fresh attention has been drawn to it, and it may be true that the number of persons following the practice of living more or less permanently in such accommodation is greater than it was after the first world war, when there was an outburst of similar complaints, but it is more than seventy years since Parliament saw the need to give powers for dealing by byelaws with " tents, vans, sheds and similar structures used for human habitation." This provision in the Housing of the Working Classes Act, 1885, was parallel with the power given by the Public Health Act, 1875, to make byelaws with respect to buildings, and came years earlier than the Housing of the Working Classes Act, 1890, which marks the beginning of the general housing work of local authorities. It is also more than 30 years since the Minister of Health addressed to a rural district council in the north of England a letter dated February 21, 1925 (printed in some text books) explaining at length the various powers exercisable as the law then stood, for improving the condition of standing encampments, of which complaint had been made both in the High Court and in Parliament. Such encampments were, it seems, much like those existing today at Chislehurst and Sidcup and elsewhere. New powers have been given in the intervening years, but the problem remains the same in essence, even if the number of families involved has increased.

First, the housing situation is still acute; if the dwellers in vans and similar structures are 160,000 as estimated by the monthly journal called *Modern Caravan*, there are not enough homes for them elsewhere. Secondly, even though these dwellings do not conform to the rules of public health and town and country planning, are local authorities in a position to inspect the camps, and condemn those which are not suitable? If the local authorities can do it, why do they not? If they do not, the idea will grow, and existing grounds of objection may become worse; the mere fact that it is so much cheaper to live this way, is likely to produce an increase in the number of such dwellings. The *Manchester Guardian* states that a witness at a recent public inquiry remarked " We don't want to lower our standard by going into rooms." This can be understood, for " going into rooms " may mean anything, apart from cost. The significant word in this comparison may be " rooms," with all that it implies of shared accommodation. Persons who are thinking about a " standard " might agree that a properly built bungalow or flat, even in modern conditions of cost, is a better proposition for the family itself, as well as for the countryside in general; it does not follow that the same preference would be expressed, if a self-contained flat or a small house at a comparable rent were offered to the van dwellers. Perhaps, however, there is an opening for some investigation of the question whether there exists a section of our people who would really prefer to live in gypsy-like conditions, if a fair comparison were possible between these and the conditions of living in orthodox surroundings. To the onlooker who himself occupies a house there seems no advantage about living in a van, unless the van is going to move from place to place, either upon holiday or in course of the occupant's ordinary life, as with the genuine gypsy and with the families concerned with circuses and fairs. Given employment at a fixed place, why (it may be asked) should the employee and his family live in a van for choice?

Yet the facts seem to indicate that such a preference exists; that is to say, that this mode of life has not always been forced upon the van dwellers, either by inability to obtain a house or by inability to pay ordinary rent.

Can it be that not enough attention has been paid to the possibility of providing homes, themselves impermanent but on a permanent footing, in the class of " vans, sheds, or similar structures " for those persons, probably limited in number, who wish to live that way?

Certainly many local authorities did their best for years not merely to stamp out vans, sheds, and similar structures but also to prevent the erection of dwellings of other materials than brick or stone, in the days when they had not themselves become the main providers of accommodation: sometimes for fantastic reasons, like the local authority in the north which argued that unconventional building materials encouraged cohabitation by young stockbrokers with women to whom they were not married, and the southern local authority which objected to flat roofs as leading to indecency. Such resistance lasted at any rate up to the coming into operation of the Public Health Act, 1936, although for a period of some 30 years before that Act the model byelaws with respect to buildings issued by the Local Government Board and from the Ministry of Health had been so framed as to facilitate the use of materials other than brick or stone, which yet were permanent for all practical purposes. Since 1937, s. 53 of the Act of 1936 has given additional powers for safeguarding public health, where materials are used which are not permanent, and yet the building is more than a " shed or similar structure," while ss. 268 and 269 have added to the power of local authorities over " vans, sheds, and similar structures."

If then a demand exists for dwellings of what can conveniently be classed as unconventional types, there seems no strong reason against letting the demand be met. If so much be granted, the problem becomes one of thinking out the best way of meeting the demand within the framework which English legislation has set. Leaving on one side the structures which are " buildings," for which (whether of permanent or impermanent materials) the stage can be set in terms of the Act of 1936 itself, the essential provisions are water supply and, probably, sewerage.

We say " probably " because well constructed and well maintained earth closets might solve part of the problem—maintenance being, admittedly, the crux. Dwellings of the type of sheds or vans must be so constructed as to be weather-proof and otherwise healthy for their occupants, with reasonable precautions against fire (and here comes in, once more, room for regret that provision is being made at present by way of sheds and caravans, instead of by way of the model byelaw designed for this purpose in the series of byelaws with respect to buildings, or of s. 53 of the Act of 1936).

The sites must be chosen in such a way as to avoid nuisance, and with due regard to the appearance of the area concerned. They must be within reasonable distance of schools, and accessible for health visitors and other welfare workers. They must, in other words, be neither too far from nor too near to collections of ordinary houses.

If these various requirements can be satisfied there seems a good deal to be said for letting people who do not want to live in an ordinary house live somewhere else, even though that " somewhere " be not the sort of residence which appeals to aldermen and councillors. As the *Manchester Guardian* points out in a leading article, the capital cost of preparing sites will be lower than that of preparing sites for erecting buildings, and, if caravans be found to stand in the way of permanent development, they can be moved bodily elsewhere. So they can if insanitary or untidy conditions be found to have developed; the static caravan has in this respect an advantage over the shed or similar structure.

English people are fond of saying that this is a free country: even in the world of local government this cliché can still be heard sometimes. Tolerance of unorthodox dwellings might be one way of showing the statement to have some foundation.

CONFERENCE EXPENSES

By PHILIP J. CONRAD, F.C.I.S., D.P.A. (Lond.), D.M.A.

Attendance at a conference by an elected representative either in pursuance of s. 267 of the Local Government Act, 1933, and the Local Government (Conference) Regulations, 1948, or under some other statutory enactment is within the definitions of an " approved duty " contained in s. 115 of the Local Government Act, 1948, for the purposes of part VI of that Act, which is devoted to allowances to members of local authorities and other bodies engaged on " approved duties."

As regards elected representatives at other conferences, where the expenditure is properly chargeable to an account of their local authority which is subject to district audit, their conference expenses are invariably controlled by part VI, by the terms of the sanction of the Minister of Housing and Local Government under the proviso to s. 228 (1) of the Act of 1933. A statement to this effect is incorporated in the Minister's blanket sanctions. This puts the great majority of conferences on the same footing as regards the expenses of members of local authorities who are authorized delegates.

Section 111 of the Act of 1948 lists the bodies to which part VI applies, including local authorities at all levels.

Section 112, as modified by s. 16 (1) of the Local Government (Miscellaneous Provisions) Act, 1953, leaves the Minister with a free hand to determine from time to time what shall be the maximum rates of financial loss allowance, by means of statutory instruments, pursuant to s. 142, embodying regulations under s. 117. The conditions in which a council member is entitled to financial loss allowance are prescribed by s. 112 as where loss of earnings which he would otherwise have made or additional expenses (other than on account of travelling or subsistence) to which he would not otherwise have been subject, is necessarily suffered or incurred by him for the purpose of performing an approved duty. *Lumley's Public Health* (12th edn.) p. 4345, discusses, in a footnote to the section, the two factors which must be proved, *viz.* that the additional loss or expense has been suffered or incurred, and that this was necessary. The current maximum rates of payment are to be found in the Local Government (Financial Loss Allowance) Regulations, 1954, S.I. 1954, No. 398., namely, in respect of any one period of 24 hours the sum of 15*s.* for four hours or less, and 30*s.* for a longer period.

In accordance with s. 113, actual travelling expenses and/or subsistence allowances may be paid to members of local authorities who are authorized conference delegates provided their expenditure is reasonably and necessarily incurred, and does not exceed the rates determined by the authority which, in turn, must not exceed those laid down in the Local Government (Allowances to Members) Regulations, 1954, S.I. 1954, No. 397 in so far as those rates are applicable. These regulations are too comprehensive to deal with exhaustively, but they provide *inter alia* for claims to be on a prescribed form, and for records to be kept of allowances paid. The first schedule details the rates for travelling allowances. Briefly, the rate for travel by public transport must not exceed the ordinary or any available cheap fare; in the case of railways, by second-class unless the authority, either generally or specially, determines that first-class fares be substituted. Supplementary allowances may be paid to reimburse actual expenditure on Pullman Car or similar supplements, reservations of seats and deposit or porterage of luggage; and on sleeping accommodation for an overnight journey, subject, however, to reduction by one-third of any subsistence allowance payable for that night. The rate for travel by a member's own private motor vehicle cannot exceed 2*d.* a mile, unless such travel involves the use of a motor car . . . and such travel results in a substantial saving of the member's time, is in the interests of the body, or is otherwise reasonable, in which case the rate may be within the higher limits defined at length in the regulations, depending on the size of car and the overall mileage in any one financial year. Additional allowances are payable in respect of the carriage of each passenger, not exceeding four, to whom a travelling allowance would otherwise be payable, actual expenditure incurred on tolls, ferries, parking, or garaging fees. The second schedule details the rates for subsistence allowances, which must not exceed, in the case of an absence overnight from the usual place of residence, 42*s.*; in the case of day trips as for a one-day conference not too far away, 7*s.* 6*d.*—4–8 hours: 12*s.* 6*d.*—8–12 hours: over 12 hours—20*s.* There is a proviso permitting an increase in the overnight rate by a supplementary allowance not exceeding 8*s.* for a stay in London, or for the purpose of attendance at an annual conference of the four principal local authority associations, or such other association of bodies as the Minister may for the time being approve for the purpose. In a number of the Minister's general sanctions endorsed on conference notices, it is specifically stated that this supplementary subsistence allowance is not applicable. The quoted rates are to be reduced by the appropriate amount in respect of any meal

provided free of charge by any authority or body during the period to which the allowance relates.

The provisions of part VI of the Act of 1948 do not apply to officers of local authorities. Like elected representatives, officers' conference expenses are, however, usually stated in the Minister's sanctions under the Act of 1933 to be subject to the regulations made under part VI, in so far as the rates laid down in those regulations are applicable.

If we accept the argument previously advanced, to the effect that the Minister has no power to limit the attendance of officers, the only limiting factor being reasonableness, then the arrangements outlined in the previous paragraph should give way in favour of the applicability of the particular officer's terms of conditions of service which, for the purpose of ascertaining the amount of reasonable expenses to be reimbursed, already apply to the statutorily recognized conferences.

The Joint Negotiating Committees for Town and District Council Clerks, and for Chief Officers, respectively, determined, in 1949, that an employing council should pay to the (town) clerk and to its other chief officers approved out-of-pocket expenses.

The Scheme of Conditions of Service of the National Joint Council for Local Authorities' Administrative, Professional, Technical and Clerical Services applies to other officers, including those deputies who do not fall within the purview of the Joint Negotiating Committee for Chief Officers. The scheme, as amended in this respect from January 1, 1956, provides as to travelling allowances that the railway fare shall be at any available cheap rate or otherwise at the ordinary return rate. Heads of departments and deputies not within the sphere of the Joint Negotiating Committee, and other officers in receipt of salaries of £970 *per annum* and over, may travel first-class; all other officers second-class, unless necessarily travelling with a member of the council, a head of a department or a deputy as aforesaid, who is travelling first-class. Heads of departments in receipt of salaries of less than £970 *per annum* are entitled to travel first-class. Subsistence allowances, when travelling in the performance of occasional or exceptional duties involving absence overnight from home, are (i) First day and subsequent days—£1 1*s*. (ii) First night and subsequent nights—£1 1*s*. For conferences which can be reached and attended in one day, providing the absence is for more than eight hours, the subsistence allowances are (i) Breakfast—5*s*. (ii) Lunch 6*s*. (iii) Tea —2*s*. 6*d*. (iv) Dinner—7*s*. 6*d*., together with out-of-pocket expenses actually and reasonably incurred in addition to meals. Where an officer is travelling by rail and necessarily takes a meal in a restaurant car, then the actual cost of the standard meal as stated on the menu card shall be reimbursed to him.

According to the terms of the Minister's blanket sanctions, miscellaneous expenses in respect of programmes, literature, etc., incurred by member and officer delegates may be reimbursed by the local authority.

Where the Minister's sanction is necessary, it is subject to the production of proper vouchers to the district auditor. Receipted hotel bills should, therefore, accompany claims for reimbursement. Railway fares will be checked.

And so we come to the end of the last of three articles on the subject of local government conferences. In the beginning of the series we bordered, in part, on the controversial. The second contribution was a mixture of law and practice, the latter being subjected to some criticism which it is hoped deserved to be regarded as constructive. On this occasion the material is strictly factual, and though perhaps in the result less interesting, it does complete the "story" we set out to tell.

WEEKLY NOTES OF CASES

CHANCERY DIVISION

(Before Harman, J.)

SUMMERFIELD *v.* HAMPSTEAD BOROUGH COUNCIL

November 8, 9, 12, 13, 14, December 11, 1956

Housing—House of local authority—Rent—Increase—"Reasonable charges"—Differential rent scheme—Duty of local authority in fixing rents—Housing Act, 1936 (26 *Geo*. 5 *and* 1 *Edw*. 8, *c*. 51), *s*. 83 (1), *s*. 85 (5) (*as substituted by Housing Act*, 1949 (12, 13 *and* 14 *Geo*. 6, *c*. 60), *sch*. *I*, *s*. 85 (6).

ACTION.

In 1934 the defendant council, as housing authority, allotted the tenant a dwelling-house, consisting of four rooms, a kitchenette and a bathroom, on their, then recently built, W. housing estate, at a rent of 13*s*. a week which included 3*s*. for rates. By 1948 this rent had been raised to £1 2*s*. a week including 7*s*. 3*d*. for rates. From 1934 to 1955 the council suffered an average annual loss on the estate of £1,773. The loss reached the peak figure of £12,196 in 1949 and stood at £6,625 in 1955, although the liability for internal repairs had been transferred to the tenants in 1951. Since 1951 the council had operated a differential rent scheme which applied only to new tenancies, but in 1954 it was decided to apply the scheme also to the old tenancies. Under the scheme a maximum rent was fixed according to the type of house, and rebates were granted to tenants unable to afford it. The plaintiff, a tenant of the council, did not qualify for any rebate, and so his rent was liable to be raised to the maximum rent of £2 a week by instalments, the full figure becoming payable from November, 1956. The tenant claimed a declaration that the new rent was unreasonable, and contended, in particular, that the rent charged was more than the economic rent of his house, *i.e*., the rent at which a house must be let in order to cover loan interest and sinking fund contribution and cost of maintenance and repair. The maximum rent as fixed by the council was related to the economic rent, not by taking any house or estate separately, but by grouping all their housing estates and then ascertaining the economic rent chargeable for houses in that group. Exchequer subsidies being pooled for the purpose of the calculation. The economic rent for a house such as that of the tenant on the W. estate was shown to be £1 9*s*. 6*d*. a week, while that for a smaller house on another estate built at a later date and more expensively, amounted to £1 19*s*. 6*d*. a week. On this basis, the council considered it fair to charge £2 a week as a maximum rent for four-roomed houses in the group.

Held: as there was no reason why a local authority might not spread its costs over all its properties to an extent which was not unreasonable from a market point of view, and as there was no duty on local authorities to limit the rent which they charged by reference to the prime cost of the houses when built, the rent was reasonable, and, being a reasonable charge which, by s. 83 (1) of the Housing Act, 1936, the council was entitled to make for the tenancy of the house, it was validly charged.

Counsel: *Dingle Foot*, *Q.C*., *Millner* and *Miss Bisschop*, for the tenant; *Sir Andrew Clark*, *Q.C*., and *Kenneth Jones*, for the borough council.

Solicitors: *Pearce & Sons*; *Town clerk*, Hampstead.

(Reported by R. D. H. Osborne, Esq., Barrister-at-Law).

NOTICES

The next court of quarter sessions for the borough of Hereford will be held on Friday, February 1, 1957, at the Shirehall, Hereford, commencing at 10.30 *a.m.*

The next court of quarter sessions for East Kent will be held on Monday, February 4, 1957, at the Sessions House, Canterbury, at 10.45 *a.m.*

The next court of quarter sessions for the borough of Andover will be held on Tuesday, February 5, 1957 at the Guildhall, Andover, at 10.45 *a.m.*

MISCELLANEOUS INFORMATION

THE REPORT OF THE HISTORIC BUILDINGS COUNCIL

The report of the Historic Buildings Council for 1955 shows that 476 applications were received during the year for grants under part I of the Historic Buildings and Ancient Monuments Act as compared with 342 in 1954. One hundred and thirty nine grants were offered of which 112 were accepted, involving a total expenditure of £370,756. The council continue to make it a condition of every grant that the public should be given reasonable opportunity to inspect the features of interest which justify government aid to preserve the building. If a building is accessible and its interior contains features which would interest the general public the council have required that the owner should agree to open the house for visits by the public on at least one day each week in the summer months. If the building is in a remote situation or if the exterior is the main interest and the interior only likely to interest students of architecture the council have considered it sufficient if the owner agrees to permit the building to be inspected by anyone who makes an appointment for the purpose. Thirty-two houses which had not previously been open on regular days are now open or will be open as soon as the progress of repair work permits.

The report indicates that the council have been impressed by the interest and co-operation which some, though unhappily not all, local authorities have shown in the preservation of the historic buildings within their boundaries. Where such interest exists, combined with a willingness to spend a certain amount from the rates, the council see no reason why, with the possibility of a government grant where the expenditure is clearly beyond the resources of the local authority, all buildings of great inportance should not be preserved. Since the council was established grants have been made to 16 local authorities for the preservation of particular buildings owned by them. The council have also had helpful discussions about the preservation of historic buildings generally with representatives of the local authority in certain other areas.

It is clear, however, that where local interest in historical buildings is absent the prospects are depressing. As is explained in the report, local authorities exercize so many functions in connexion with historic buildings that they are in a dominating position particularly in towns. The local planning authority is the body on which responsibility is placed under the Town and Country Planning Act, 1947, for considering all proposals to alter historic buildings in a manner which will seriously affect their architectural interest and all proposals to demolish such buildings. The local authority has an important part to play in ensuring that the immediate surroundings of a historic building are not developed in a manner which greatly reduces their interest. It is explained in the report that another important aspect of this matter is that in many areas the local authorities are the bodies which can most easily find uses for historic buildings when they are empty and likely to be demolished if they cannot be used. Finally county and borough councils possess powers under the Ancient Monuments Acts to make grants for the repair of ancient monuments which include, subject to confirmation by the Minister of Works, most of the buildings, including occupied houses, which have been listed under the Town and Country Planning Act as being of special interest.

The report refers to the apathetic and even hostile attitude of a few local authorities which, it is suggested, is not consistent with the far-reaching responsibilities placed on them for the preservation of historic buildings generally. It appears that not all local authorities make use of their powers to make grants. But a notable example of the willingness to use their powers was the decision of the Bath city corporation to devote the product of a penny rate towards preserving the architectural features of the houses in certain historic terraces where, as a result of the recommendations made by the council, a programme of work is also supported by an annual grant from the Ministry of Works.

In spite of the difficulties experienced in dealing with certain local authorities the council express their appreciation of the co-operation received from other local authorities and from the Ministry of Housing and Local Government. It is mentioned that the Ministry has powers under the Town and Country Planning Act which can prevent even the least co-operative local authority taking any positive action to demolish a historic building but they have no powers to compel a local authority to co-operate in preserving the building; for example by carrying out repairs which may be essential if a building owned by the local authority is to survive. However, the Ministry has always been willing to try to use its powers of persuasion in difficult cases, as the council have also done, and these efforts have proved successful in securing agreement in some but not all of the cases where difficulties have arisen.

MORE POWER FOR HUDDERSFIELD

The Huddersfield Corporation Act, 1956, gives the county borough certain powers which are of interest to other local authorities who may be promoting private Bills. Many of them follow precedents in other local authority Acts but some are apparently new. One section gives the corporation extended powers as to the erection of decorations in streets on the occasion of any public festivity but the consent of the Minister of Transport and Civil Aviation is required before exercising the power in a trunk road or the consent of the British Transport Commission in a street belonging to or repairable by the Commission. Special provision is also made in relation to the demolition of buildings, building nuisances and various health matters. In connexion with the recovery of rates from tenants and lodgers it is provided that for the purposes of the Rating and Valuation Act, 1925, the rates due from the person rated for any hereditament shall be deemed to be in arrear if such rates are not paid within two months after lawful demand in writing has been made for the same.

On the welfare of the aged and handicapped persons, the corporation is empowered to make arrangements for providing aged persons and persons to whom s. 29 of the National Assistance Act, 1948, applies with meals and other domiciliary services in their homes. The corporation may also provide aged persons with recreational facilities in their homes or elsewhere and can accordingly provide clubs which, under the general law, can only be provided for the aged by voluntary organizations. Under the Act of 1948 a local authority cannot provide what are commonly called " meals on wheels " but may make contributions to the funds of any voluntary organization whose activities consist in or include the provision of recreation or meals for old people. The corporation now, therefore, have powers which are supplementary to their powers of providing home nurses and domestic helps under the National Health Service Act, 1946.

A further power enables the corporation to recover from persons availing themselves of any service provided by the corporation such

charges (if any) as having regard to the cost of the service the corporation may determine whether generally or in the circumstances of any particular case. Another interesting power is one whereby the corporation may provide for the disposal of lost and uncollected property left in any premises occupied by the corporation to which the public have access or deposited in a cloak-room or parcels store provided by the corporation for the use of the public.

SUNDAY TRADING AT HOLIDAY RESORTS

Hastings corporation drew the attention of the Association of Municipal Corporations to the position as to Sunday trading under the Shops Act, 1950 and in particular to the provision that shops in holiday resorts may be open for 18 Sundays in each year. Certain traders in Hastings have taken advantage of fine Sundays and the influx of visitors to the town on such days, to open their shops before the operation of the commencing period, which, after Easter Sunday, is the Sunday before Whitsun. Having regard to the present trend for the holiday season to extend for a very short period from the end of July to about the end of August the council are of opinion that the holiday resort trader should have the opportunity of taking advantage of the early seasonable trading when the motorist comes into the town on fine Sundays in May and April. It seems that other holiday resorts are having the same difficulties in dealing with alleged offences under the Act. It is understood that the Government propose to introduce legislation to deal with this matter arising on the report of the Gowers Committee.

PARLIAMENTARY ELECTIONS

The Kent county council suggested to the County Councils Association that fees paid to clerks of county councils as acting returning officers for parliamentary elections should be removed from the scope of the Superannuation Acts, and the matter has been the subject of a report to the executive council of the association. It is pointed out that the High Sheriff is still the returning officer for parliamentary elections but he is precluded from acting as such unless he first gives written notice to the clerk of the county council and relieves him of responsibility. The direct and effective responsibility for the conduct of these elections has been placed by parliament on the county clerk; it is his personal and statutory obligation. The cost of elections is met by the Treasury and the prescribed fees include a personal fee to the acting returning officer. Ordinarily, where there is more than one constituency in a county, the acting returning officer appoints a deputy for part of the work. Any payment to the deputy must come from the clerk's personal fee and is a matter for mutual agreement. Superannuation contributions are payable on the gross personal fees received by the acting returning officer. Sometimes there has been a local arrangement for contributions only to be made on the gross fee after deduction of payments. Such an agreement is apparently contrary to law. The association took the view that the personal fee payable to the acting returning officer should be assessed on the basis of his personal responsibilities rather than that of actual work done and that only this fee should be subject to superannuation deductions; and further that all superannuation liabilities arising in regard to payments made in connexion with parliamentary elections should be borne by the Exchequer. Representations have been made to the Minister of Housing and Local Government accordingly.

THE LEICESTER RATEPAYER AND HIS MONEY 1955–56

This is the title of the excellent summary of the city's finances prepared by treasurer S. B. Bordoli, F.I.M.T.A., A.S.A.A.

A sketch of the borough chamberlain's chest opens the booklet (the actual chest can be seen in Leicester Guildhall) together with a note about the office of borough chamberlain. Two of these posts were established in about 1334 to assist the Mayor in the administration of the financial affairs of the town and in the year 1520 the Mayor and his members resolved "that ever more hereafter that the fyrst Fryday in Clene Lenton to have a common hall kepyd and ther the chaumberlens accomptes to be shewyd that it may be knowyn in what degre the towne stand in." The borough chamberlains' appointments continued for 500 years eventually being superseded by that of city treasurer.

No information is given about the calls on the ratepayers in the past although the city's funds were evidently worth locking up because in the accounts for 1563–64 an expenditure of 3*d.* is recorded for the purchase of "a lock to hang upon the chest where the accomptes be." The information about the present day ratepayer of Leicester indicates that he is not at all badly treated, his average weekly rate bill being 5*s* 11½*d.*, of which close on half is for education and nearly a third for health services. Although the corporation have spent over £22 million on housing and own 19,300 properties the charge to the ratepayers for this service is limited to the minimum and costs the average ratepayer only 2½*d.* a week.

Rate poundage was 25*s.* 10*d.* and the amount collected £2·9 million, rather less than grant aid which totalled £3·2 million.

The trading undertakings of the corporation cost the ratepayers nothing, neither did they contribute anything in relief of rates. A deficit of £28,000 on the transport undertaking was charged against the undertaking's reserve fund and a surplus of £22,000 on the water undertaking was used partly in defraying capital expenditure and partly in accelerating debt redemption.

The average rate of interest paid on the net debt of £28 million at the end of the year was £3 11*s.* 6*d. per cent.*: as in other comparable authorities about two-thirds of this debt was incurred on housing account.

As a result of revaluation the rateable value of the city has increased from £2·3 million to £4·4 million: the figures for house property illustrate the advantage accruing to this type of hereditament by reason of the application of the 1939 basis of valuation, the increase here being only of the order of 50 *per cent.*

The corporation is one of the diminishing number of authorities to continue to run civic eating places. The summarized results from 1947–48 onwards, when the former British restaurants were purchased from the Ministry of Food, show original losses turned into profit by change of policy and skilful management. The 1955–56 profits were £1,700, the best since the corporation took over.

Mr. Bordoli includes a statement on an original cost basis of what the corporation owns and owes: the difference of £17½ million being his computation of what it was worth at March 31, 1956.

EAST HAM JUBILEE

It is just 50 years since East Ham—now a county borough on the fringe of London—was granted a commission of the peace, and at a jubilee dinner on Thursday, November 29, Lord Merthyr, T.D., J.P., D.L., chairman of the council of the Magistrates' Association, was the guest of honour.

Congratulating the East Ham justices and proposing their toast, Lord Merthyr said their work was symbolic of what was being done all over the country and what had been done for the last six or seven centuries. In the olden days, it was just an honour to be a J.P., and a large proportion of the justices never went near a bench; they might have been justices of half a dozen different benches and in different counties. That had gone and he thought it right that it should. Nowadays, it was primarily a job of work—voluntary work—and he had no doubt a good many people from overseas wondered why they did it, and why they gave up so much of their time to hearing cases. One of the chief reasons was, that they realised that they were performing a public duty on behalf of their fellow citizens. No magistrates would say that the system under which they worked was perfect, but he thought that after the long period of time during which it had been in existence it was a challenge to anyone to produce a better system. The system under which they carried on, worked very well.

Mr. R. J. L. Slater, F.R.I.B.A., chairman of the East Ham bench, who presided, responded and mentioned that in 50 years there had been 93 appointments of justices in East Ham and at present there was a bench of 28. Since 1954, they had functioned without a stipendiary magistrate. In half a century there had been only three chief clerks, the present clerk (Mr. E. S. Gonning) having been with the court only 2½ years.

PUBLIC HEALTH IN THE WEST RIDING

The annual report of the county medical officer for the West Riding of Yorkshire, while describing in considerable detail the operation of the public health and preventive medical services also includes an interesting account of the divisional administration operating in the county. It is shown that this has facilitated liasion at local level by making it possible for officers of the local health authority to meet and to work in close touch with their opposite numbers in the hospital and domiciliary services. Every effort is made to foster a spirit of goodwill and active co-operation with the family doctors who have acquired a great awareness of the assistance available to them and their patients through the medium of the local health services. The problems associated with the welfare of the old, infirm, disabled and mental illness cases appear to have done much to bring this about. A conference of divisional officers is held each month. This affords an opportunity for an interchange of views and a discussion of any unusual problems which have arisen. Sometimes officers of the Ministry of Agriculture, Fisheries and Food, and the Medical Research Council have been present. One way in which co-operation is achieved with general medical practitioners is through a special sub-committee consisting of four medical practitioners representing the executive council and four medical officers representing the medical staff of the county council.

Amongst the matters considered in the report are the responsibilities of the department for mental health. It is noted, for instance, that mental health social workers visited 639 mentally ill persons during

the year, the majority of whom had been discharged from mental hospitals, out-patient clinics or the armed Forces. There were also 191 persons (mostly old people) with respect to whom the duly authorized officers were asked by the family general practitioner or relatives to institute proceedings for admission to a mental hospital in whose cases the officers considered this was unnecessary or undesirable. Steps were taken to provide the care required, either in a chronic sick hospital or in residential accommodation under the National Assistance Act; or by providing home helps or home nurses and by seeking the co-operation of voluntary organizations.

The vast amount of work done in health education is shown by the fact that during the year 41,000 leaflets covering a wide range of subjects were distributed. There was co-operation with the Central Office of Information in the insertion of advertisements in local newspapers drawing attention to the safeguards afforded by diphtheria immunization and as to the facilities available for immunization.

Previous reports have referred to the increased co-operation which has been achieved between the county health department and the hospital service. In some parts of the county this has been achieved through a liaison health visitor having direct access to the hospital. It has also been helpful when almoners have sought to ensure that after-care commenced in hospital is continued at home.

BIRMINGHAM WEIGHTS AND MEASURES DEPARTMENT

The problem of shortage of staff is evidently serious in Birmingham, and as Mr. J. A. Birch, chief inspector of weights and measures, points out in his annual report, further difficulty will be experienced if, as is probable, further legislation imposes additional duties upon the inspectors. In fact, during the year under review it was not possible to discharge fully the important duty of visiting the premises of every trader in the area for the purpose of inspecting all weighing and measuring appliances to which the Acts apply.

Although some inaccuracies in weighing or measuring may occur without the knowledge or intention of the trader, this is not always so. This report refers to four prosecutions in respect of unjust scales. These were all self-indicating scales which were out of level in favour of the user. Traders can hardly plead ignorance in this matter, as such scales are fitted with spirit levels and levelling feet, the purpose of which is obvious.

The steep rise in prices has led to another difficulty in the use of some appliances, for as Mr. Birch states, "One effect has been to render out of date the price-computing charts fitted to the seller's side of many of the older self-indicating scales, these having a maximum price in some cases of 2*s.* or even 1*s.* 6*d.* per pound. Many traders have had new indicators fitted having a range more commensurate with current prices. Others, however, have adopted the practice of reading the indication for half the appropriate price per pound and then doubling it. It is emphasised that this practice is dangerous, particularly when employed by young, inexperienced assistants, as any visual or mechanical error will be doubled, to say nothing of the risk of arithmetical aberration. The year's prosecutions include at least one case of short weight by reference to the price charged where the latter was calculated by this method."

Birmingham is in a position of special importance as a great centre of trade and manufacture. As the report says "It will be appreciated that many food products manufactured and packed in Birmingham have a nation-wide distribution and that any default may have serious and far-reaching consequences. It is therefore gratifying to report that the department's advice and assistance with regard to packing problems is often sought by many of the firms concerned, and regular inspection welcomed."

Practices in retail trade that are to be deprecated include what is described as dual declaration of weight, *e.g.*, marking a packet of biscuits "average net weight eight *oz.* minimum net weight 7½ *oz.*" When a housewife asks for "half a pound" the retailer is placed in a somewhat invidious position in supplying her with a packet which, on the manufacturers' own admission, may contain only 7½ *oz.* More objectionable is the practice of a few traders of placing the scale in such a position that the customer cannot really see what it indicates, or of giving too little time for the indicator to settle so as to be read by the customer. Complaints have also been made about charging a few coppers for a slight excess over the weight demanded, when the customer discovers upon working it out that there has really been an overcharge.

We agree with the description "miserable minority" in the following passage in the report.

"It is appropriate to mention here that miserable minority of traders who, not content with the margin of profit represented by prevailing prices, avail themselves by various means of a modest margin of short weight within which they appear to imagine it is safe to operate without fear of prosecution. The department endeavours to discourage such illusions and during the year brought proceedings in certain instances in respect of relatively small deficiencies where there was evidence that these were persistent and not inadvertent."

Most of the offences relating to coal consisted of delivery of less than the proper number of bags. There were many instances of one bag short in five, and two or three bags short in 10; others included eight *cwt.* short in a *ton* and 12 *cwt.* in four *tons*. Twenty coal carters received prison sentences.

Under the heading of "sand and ballast" the report states that the systematic inquiries and examination of documents at building sites revealed evidence of some large scale frauds and questionable practices on the part of some haulage contractors and drivers, particularly in relation to shale and demolition materials such as hardcore. One prosecution resulted in two men being sent to prison.

MAGISTERIAL LAW IN PRACTICE

East Anglian Daily Times. November 30, 1956

PRISON FOR MAN WHO GOT FREE MEAL

For incurring a debt of 2*s.* 3*d. at Heywood's Café, Bury St. Edmunds, by means of fraud, Stanley Hodgson, unemployed, and of no fixed abode, was sent to prison for* 14 *days by Bury magistrates yesterday.*

Chief Inspector D. F. Key said Hodgson went into the café and ordered and consumed a supper costing 2*s.* 3*d. He left without paying and was arrested. He said "I pay for nothing," and when asked where he worked, replied: "Work, that's a very bad habit." He had* 1*d. on him when arrested.*

In *R.* v. *William Jones* (1898) 62 J.P. 33, the defendant ordered a meal in a restaurant; he made no verbal representations at the time as to his ability to pay, nor was any question asked him with regard to it. After the meal he said that he was unable to pay, and that he had (as was the fact) only one halfpenny in his possession. It was held that he could not be convicted of the offence of obtaining goods by false pretences, but that he was liable to be convicted of obtaining credit by means of fraud within the meaning of s. 13 (1) of the Debtors Act, 1869.

Offences under s. 13 (1) of the Debtors Act, 1869, of obtaining credit under false pretences, or by means of any other fraud, in incurring any debt or liability, are triable summarily with the consent of the accused (s. 19 and sch. 1, Magistrates' Courts Act, 1952).

Evening News. December 14, 1956.

ZOO KEEPER ACCUSED OF DRIVING DANGEROUSLY

Death Charge Under New Act

Passenger Killed

In what is believed to be the first prosecution of its kind under the new Road Traffic Act, a motorist, described as head zoo keeper Philip Royston Dalby, aged 32*, of Oakford Road, Kentish Town, was charged at Carlisle today with causing the death of Margaret Fox by driving dangerously.*

Mr. Christopher Bourke, barrister for the Director of Public Prosecutions, said that on the main Penrith-Carlisle Road a heavy motor lorry, driven by Thomas Sharp, and a private car, driven by the defendant, were in an accident.

Miss Fox was a passenger in the car.

The present charge represented a completely new offence created by the Road Traffic Act, 1956*. The prosecution had to prove that the defendant's management of the car was so dangerous as to cause the death of the person named.*

Mr. Bourke said s. 8 *of the Act provided that it was not necessary for the prosecution to prove recklessness, as was a vital ingredient in cases of manslaughter.*

Marks "for 68 Yards"

If, as was alleged in this case, there were brake marks before the point of impact for 68 *yards and the car skidded broadside-on before*

a violent collision, the magistrates might well conclude that the car was being driven so fast that the driver had lost all proper control of it.

Sharp was driving a heavy motor lorry with ten tons of kerbstones. At a road junction there were three cars waiting for the lorry to pass before the first turned off into a side road.

Beyond these was defendant's car, which pulled out to overtake. But the defendant changed his mind apparently and braked, with the consequences described.

In an alleged statement, defendant had said he was travelling at 40 m.p.h. at the time.

Defendant, who pleaded not guilty, was committed for trial at Cumberland Assizes.

Section 8 of the Road Traffic Act, 1956, came into force on November 1, 1956. It creates the new offence of causing death by the reckless or dangerous driving of motor vehicles.

Subsection (1) provides that "any person who causes the death of another person by the driving of a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, shall be liable on conviction on indictment to imprisonment for a term not exceeding five years."

The offence is not triable at quarter sessions (subs. (2)).

The clerk to the examining justices must inform the coroner of the making of the charge, and of the committal for trial or discharge, as the case may be, of the person charged (subs. (3), applying s. 20 of the Coroners (Amendment) Act, 1926).

At the trial, if the jury are not satisfied that the defendant's driving was the cause of the death, but are satisfied that he is guilty of driving recklessly, or at a speed or in a manner which was dangerous to the public, they may convict him of that offence under s. 11 of the Road Traffic Act, 1930, whether or not notice of prosecution for that offence has been given under s. 21 of the Road Traffic Act, 1930, (subs. (4)).

Evening Standard. November 20, 1956

THE FIRST JAY WALKER—HE IS FINED £3

Policewoman tells court 'man rushed by me'

Evening Standard Reporter: Southend, Tuesday

Southend magistrates today heard what was said to be the first prosecution in the country under a new section of the Road Traffic Act which deals with pedestrians.

Michael Fox, 26, described as an actor, of York Road, Southend, was summoned for failing to comply with a traffic direction in Southchurch Road, Southend, on November 3—three days after the section became law.

Fox, who did not appear but wrote admitting the offence, was fined £3 with £3 3s. costs.

'Deliberate'

Mr. R. A. Shorter, prosecuting, said the new section of the Act provides that pedestrians should not cross the road in contravention of a direction by a police constable in uniform.

"The circumstances of this offence are very simple, but from the evidence it appears that what this defendant did was deliberate," he said.

Policewoman Patricia Fogg said she was regulating traffic at a zebra crossing in Southchurch Road and had her right arm fully extended to indicate to pedestrians that they must not cross. With her left arm she was beckoning on the traffic.

She said: "Suddenly I felt my right arm forced down and saw a man rushing past. I caught hold of him and by this time we were in the middle of the crossing. A car had to brake sharply to avoid hitting us. The defendant shook his arm free and I asked him why he had gone over the crossing.

Thank you

"The defendant said to me, 'I saw you there, but there was time for me to cross before that car came. I wanted to catch a train.'

"I told him he would be reported, and he replied: 'Thank you for telling me. I did not know. I have not read the papers for weeks.'"

In his letter Fox apologised and repeated that he was hurrying to catch a train, and did not know he was committing an offence.

He added "I am deeply and sincerely sorry."

Section 14 (1) of the Road Traffic Act, 1956, which came into force on November 1, 1956, provides that "where a police constable in uniform is for the time being engaged in the regulation of vehicular traffic in a road, any person on foot who proceeds across or along the carriageway in contravention of a direction to stop given by the constable, in the execution of his duty, either to persons on foot or to persons on foot and other traffic, shall be guilty of an offence and liable on summary conviction to a fine not exceeding £10, or in the case of a second or subsequent conviction to a fine not exceeding £25.

In this connexion it may be useful to draw attention to s. 46 (4) of the Road Traffic Act, 1956, which also came into force on November 1, 1956.

Pedestrian crossing regulations are made under s. 18 of the Road Traffic Act, 1934. Subsection (8) of that section provided that any person who contravened the regulations should be liable to a fine not exceeding such amount (being £5 or less) as might be specified in the regulations. Section 46 (4) of the 1956 Act provides that "for subs. (8) of the said s. 18 there shall be substituted the following subsection:—(8) Any person who contravenes any regulations made under this section shall be guilty of an offence and liable to a fine not exceeding £10 or, in the case of a second or subsequent offence, to a fine not exceeding £25." The maximum penalty for a contravention of the Pedestrian Crossings Regulations, 1954, is now, therefore, £10 for a first offence and £25 for a second or subsequent offence, and not £5 as was specified by reg. 9.

[This case was earlier the subject of editorial comment—*see* 120 J.P.N. 784.—*Ed., J.P. and L.G.R.*]

The Star. November 19, 1956.

FIRST CYCLIST FINED FOR DRINKS OFFENCE

What is said to be the first prosecution under Section 11 of the Road Traffic Act, 1956, against a cyclist for riding while under the influence of drink came before Mr. Seymour Collins at Tower Bridge Court today.

Dennis Joseph Brown, 42, of Carrington House, Deptford, pleaded guilty to a charge of riding a pedal cycle at Lower-road, Rotherhithe, on November 17, while under the influence of drink.

It was stated that at 11.45 pm on November 17 Brown was seen riding his cycle in an erratic manner at Lower-road. He fell off and was arrested.

He was seen by a doctor and was certified as under the influence of drink and unfit to ride a bicycle.

Mr. Collins said: "This is a very serious matter, as you could do a lot of damage.

"Under this new Act you are brought into the same category as a motorist, but there is this difference—the motorist is insured and you are not. Pay a fine of £3 and £3 costs."

On November 1, 1956, s. 11 of the Road Traffic Act, 1956, came into force (S.I. 1956 No. 1491 (C.10)). That section applies to persons riding bicycles and tricycles, not being motor vehicles,

(*a*) subs. (1) of s. 11 of the Road Traffic Act, 1930, (which penalizes reckless and dangerous driving),

(*b*) subs. (1) of s. 12 of that Act (which penalizes careless driving),

(*c*) subss. (1) and (4) of s. 15 of that Act (which penalizes driving under the influence of drink or a drug), but with the omission of the reference to attempting to drive,

(*d*) s. 20 of that Act (which gives power to stop drivers, obtain their names and addresses, and arrest them in certain cases),

(*e*) s. 21 of that Act, (which requires the giving of warnings of proposed prosecutions) so far as it relates to reckless, dangerous, and careless driving,

(*f*) s. 35 of the Road Traffic Act, 1934, (which enables a charge of careless driving to be substituted on the hearing of a charge of reckless or dangerous driving).

Subsection (2) of s. 11 of the 1956 Act provides that the offences shall be tried summarily and that the maximum penalties for cyclists shall be:—

(*a*) for reckless or dangerous driving, or driving under the influence of drink or a drug, on first conviction £30, and on subsequent conviction £30 or three months,

(*b*) for careless driving, on first conviction £10, and on subsequent conviction £20.

Subsection (3) provides that in determining whether convictions for those offences are second or subsequent convictions, convictions in connexion with motor vehicles and pedal cycles are to be regarded separately.

In *Corkery* v. *Carpenter* [1951] 2 All E.R. 745; 114 J.P. 481, it was held, applying *Taylor* v. *Goodwin* (1879) 43 J.P. 653, and *Cannan* v. *Abingdon* (*Earl*) (1900) 64 J.P. 504, that the word "carriage" in s. 12 of the Licensing Act, 1872, is wide enough to include a bicycle. However, it is no longer possible to charge a cyclist under that section, for s. 15 (3) of the Road Traffic Act, 1930, provides that "a person liable to be charged with an offence under this section shall not be liable to be charged under s. 12 of the Licensing Act, 1872, with the offence of being drunk while in charge on a highway or other public place, of a carriage."

It is still open to take proceedings against a cyclist for driving furiously so as to endanger the life or limb of any passenger, under s. 78 of the Highway Act, 1835; or for driving furiously, under s. 28 of the Town Police Clauses Act, 1847; or (in the Metropolitan police district) for driving furiously, or for driving so as to endanger the life or limb of any person, or for driving to the common danger of passengers, under s. 54 (5) of the Metropolitan Police Act, 1839.

PERSONALIA

APPOINTMENTS

Mr. Raymond Harold Allen, at present deputy clerk and financial officer to Freebridge Lynn, Norfolk, rural district council, has been appointed clerk to Penrith, Cumbs., rural district council, in succession to Mr. J. W. Smith who is retiring after holding the office for 56 years. Mr. Allen is 36 years of age and began his career as a solicitor's clerk in 1937, becoming a clerical assistant with the Freebridge Lynn rural district council two years later. He served with the R.A.F. during the war, returning to the council in 1946 to become committee clerk and financial assistant. The following year he was made assistant clerk and financial officer and in 1953 deputy clerk. He takes up his new duties on April 1.

Mr. R. A. Cork, deputy town clerk of Weymouth and Melcombe Regis, Dorset, is to be town clerk of Lytham St. Annes, Lancs., in succession to Mr. Walter Heap, who retires in March after 27 years in that appointment.

Mr. J. B. Harwood, LL.B., has been appointed deputy town clerk of Bedford, as from February 12, 1957. Mr. Harwood is at present senior assistant solicitor with Harrogate, Yorks., borough council. He was formerly assistant solicitor with Blackpool county borough council and prior to that held a similar position at Lytham St. Annes. The post is a new one.

Mr. A. G. Foulds, LL.B., who is assistant solicitor with Messrs. T. J. Chellow and Son, of St. Ives, Cornwall, has been appointed assistant solicitor to the Eastern Electricity Board. The appointment is to fill the vacancy created by the resignation of Mr. J. C. Nixon who has taken up private practice.

Mr. A. W. Garwood was appointed on January 1, 1957, as a probation officer in the London probation service. Previously, he served as a whole-time officer in Birmingham and Southend from June, 1944 to July, 1948, and in Altrincham, Cheshire, and Kent combined area from May, 1950 to May, 1953. Mr. Garwood also held the post of probation officer in Rhodesia from August, 1948 to May, 1950 and that of assistant provincial probation officer in British Columbia from May, 1953 to August, 1956.

Mr. J. D. Houston was appointed on January 7, 1957, as a probation officer in the London probation service, having just completed training under the Home Office training scheme.

Police Superintendent A. E. Wombwell, of Chelmsford, has been promoted chief superintendent in succession to Chief Superintendent Ruggles, in charge of the Romford division of Essex constabulary.

HONOUR

By some mischance, we omitted from our list of New Year Honours the name of Miss Ethel Phyllis Corner, who received the M.B.E. Miss Corner is a probation officer in Derbyshire and is now in her second year of office as chairman of the National Association of Probation Officers. She is the first woman probation officer to hold this position.

RETIREMENT

Mr. T. W. Storr, deputy town clerk of Northampton, who came there first as assistant solicitor in 1928, is retiring on April 7 and the post is to be advertised without attaching to it the position of deputy clerk of the peace.

OBITUARY

Mr. Walter Hanks Day, clerk of the peace at Maidstone, Kent, for more than 50 years and formerly coroner for more than 20 years, has died at the age of 89.

Lieut.-Col. C. G. Cole-Hamilton, chief constable of Breconshire, 1912 to 1947, has died. He was also deputy lieutenant for the county.

GOODLY COMPANY

(*Concluded from p.* 41, *ante*)

The heyday of such exploits as we described last week, in connexion with company meetings, was the Victorian Age, and no writer has captured the spirit of power and defiance that infused its great captains of industry so vividly as John Galsworthy. Here is the picture of old Jolyon Forsyte presiding, on a melancholy occasion, at the General Meeting of the New Colliery Company:

> " In the centre of the row old Jolyon, conspicuous in his black, tight-buttoned frock-coat and his white moustaches, was leaning back with finger-tips crossed on a copy of the directors' report and accounts. On his right, always a little larger than life, sat the Secretary, an all-too-sad sadness beaming in his fine eyes; his iron-grey beard, in mourning like the rest of him, giving the feeling of an all-too-black tie behind it . . . Beyond old Jolyon on the left was little Mr. Booker, and he too wore his General Meeting look, as though searching for some particularly tender shareholder. And next to him was the deaf director, with a frown; and beyond the deaf director again was old Mr. Bleedham, very bland, and having an air of conscious virtue . . .
>
> " And now old Jolyon rose, to present the report and accounts. Veiling under a Jove-like serenity that perpetual antagonism deep-seated in the bosom of a director towards his shareholders, he faced them calmly. He knew most of them by sight . . .
>
> ' If any shareholder has any question to put, I shall be glad to answer it.' A soft thump. Old Jolyon had let the report and accounts fall, and stood twisting tortoise-shell glasses between thumb and forefinger."

That meeting, as readers of *The Man of Property* will remember, might have been a stormy one; but old Jolyon, by the force of his personality, quelled the opposition and piloted his Board safely into port. There can be no more vivid illustration of the degeneracy of this present age than the recent report in *The Times* of the annual meeting of a company in Leamington Spa:

> " The meeting was ending when a shareholder stood up, reached into his overcoat pocket, pulled out a paper bag, and hurled three eggs and a tomato. They splashed against a wall near the directors. The company's secretary later said: ' Mr.— saw fit to underline his objections to the board's policy with three eggs and a tomato. He seemed to be under a pile of struggling shareholders, but he left quietly afterwards.' Mr.— said at his home: ' It is quite true that I threw some eggs and a tomato. I threw them at any member of the board, and did not aim at any particular person. This is the only way I can show my disapproval '."

Nobody thought fit to quell this dissentient shareholder with Lady Macbeth's reproof:

> " You have displac'd the mirth, broke the good meeting,
> With most admir'd disorder."

We have frequently heard the expression " casting votes " but cannot remember its use in this strictly literal sense. We have searched the Act of 1948 and Table "A" without finding any authority for this unorthodox method of expressing dissent; but we propose to visit Bush House at the earliest opportunity to inspect this company's file, since it may well be that its Articles of Association are in some unusual form. If that should prove to be the case, it will provide us with a useful precedent for enlivening proceedings which are all too often conventional, insincere and deadly dull. " Minorities " said Sidney Smith " are almost always in the right," and it was he, too, who quoted with approval Lord Thurlow's remark—"A company has neither a soul to lose nor a body to be kicked." Why, then, should shareholders get all the kicks and none of the ha'pence? Verbal missiles which are explosive without being lethal are frequently hurled, from the shelter of the board-room table, indiscriminately at the shareholders in general; but there is nothing in the Companies Acts which lays down that the directors are to have all the fun.

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Children and Young Persons—*Fit person order—Appeal to quarter sessions.*

With reference to your reply under the above heading at P.P. 4, 120 J.P.N. 667 I shall be glad to have your opinion as to who can appeal under s. 102 of the Children and Young Persons Act, 1933.

A fit person order has been made in favour of X council in respect of a child A. At the hearing before the juvenile court both M, the mother, and F, the father, gave evidence. M has the custody of A by virtue of an order of the magistrates' court and was willing to place A in the care of the county council and the question arises whether F has a right of appeal to quarter sessions against the fit person order.

The question also arises whether F can appeal against the order on his own account or whether the right of appeal is merely given to the child. Do the words "on his behalf" govern both the words "his parent" and "guardian"? If a right of appeal is merely given to the child and the appeal must be on his behalf then it is difficult to see how a parent who has not the legal custody of the child can very well bring an appeal on his behalf. Section 102 is contrasted with s. 84 (6) of the same Act which provides that an order committing a child to the care of a fit person may on the application of any person be varied or revoked, and it seems clear that under this section F can take action to have the order revoked. Can F appeal to quarter sessions and, if so, can his appeal be on his own account?

RINCON.

Answer.

In our opinion the words "on his behalf" relate to both parent and guardian, and neither can appeal except on behalf of the child or young person.

There appears, however, to be no reason why the father should not appeal in this case on behalf of the child, even if the mother has the custody by virtue of an order of a magistrate's court.

2.—Criminal Law—*Protection of Animals Act*, 1911, *s.* 1 (1) (*c*)—*Spectators at cockfight.*

Referring to your P.P. 3 at 120 J.P.N. 621 I would respectfully disagree with your contention that "On the analogy of prize fighting, spectators could only be prosecuted as aiders and abettors if they were actively encouraging" quoting as your authority *R.* v. *Coney* (1882) 46 J.P. 404. I suggest that statement goes beyond the *ratio decidendi* of the case, where the court held that a chairman of quarter sessions, had not given a correct direction to the jury when he told them that, as the appellants were physically present at the fight, they must be held to have aided and abetted. That direction was wrong, it being too wide, but *semble* mere presence, unexplained, afforded some evidence for the consideration of a jury of aiding and abetting. This decision was applied in *Wilcox* v. *Jeffery* [1951] 1 All E.R. 465; 115 J.P. 151, when Lord Goddard, C.J., quoted with approval the concise way in which the matter was put by Cave J., in *R.* v. *Coney*, when he said: "Where presence may be entirely accidental, it is not even evidence of aiding and abetting—where presence, is *prima facie* not accidental it is evidence, but no more than evidence, for the jury."

The meaning of "assist" appears to be *res integra*, but it is suggested that it cannot connote anything less than "aiding and abetting" and *ex hypothesi* the cases quoted can be applied.

If this is accepted, then the presence of a spectator at a cockfight would be some evidence of "assisting," rebuttable by evidence of accidental presence, which, if reasonable, I submit, the court would be bound to accept. In the absence of such explanation, then the court would be entitled to assess the weight of evidence, and if sufficient, convict.

H. JOHNIAN AGAIN.

Answer.

We do not follow our correspondent's reasoning, although we agree that the reference to which he takes exception might more properly be phrased "spectators could only be successfully prosecuted as aiders and abettors if they were actively encouraging." We do not agree that the presence of a spectator at a cockfight would be some evidence of "assisting." We still think that before a spectator can be convicted of assisting, he must be something much more than a mere spectator, *e.g.*, he must have brought a bird or cockfighting equipment to the fight.

3.—Criminal Law—*Section* 12, *Criminal Justice Act*, 1948—*Effects of probation and discharge.*

A is given an absolute discharge under s. 7 of the Criminal Justice Act, 1948 but is ordered to pay the court cost of 4*s.* and to pay damages of say £10 under s. 11 (2). At a later date he is convicted of quite a different offence and after conviction the police proceed to give evidence of previous convictions and mention the absolute discharge. Having regard to s. 12 are they entitled to mention the absolute discharge. I find it difficult to understand what is meant in this section which states that such conviction shall be deemed not to be a conviction for any purpose "other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the foregoing provisions of this Act." Am I right in thinking that the words "other than the purposes of the proceedings in which the order is made" mean that the absolute discharge shall only operate as a conviction to enable the enforcement of the costs and damages. What is meant by the words "and of any subsequent proceedings which may be taken against the offender under the foregoing provisions of this Act." What are the foregoing provisions in its relation to an absolute discharge? It seems to me that where there has been an absolute discharge, it should never be mentioned by the police when the accused is later convicted of some other offence and that the same applies to a conditional discharge if within the 12 months of the order the accused commits a further offence, and that likewise no mention should be made by the police of the fact that the accused was previously placed on probation unless during the probationary period he committed a breach of a requirement under s. 6.

I shall be glad to have s. 12 clarified on this point, both for those placed on probation or discharged absolutely or conditionally.

HEAST.

Answer.

We are far from agreeing that the police should never mention the fact that a man has been previously dealt with under s. 3 or s. 7 of the Act on the occasion of a subsequent conviction. To hold otherwise would mean that a persistent offender could lead a charmed life if he appeared every time as a first offender, no mention being made of previous appearances on which he was put on probation or absolutely or conditionally discharged. The manner in which such previous appearances should be mentioned is dealt with in *R.* v. *Harris* [1950] 2 All E.R. 816; 114 J.P. 535.

We agree that the words "other than the purposes of the proceedings in which the order is made" mean that an absolute discharge ranks as a conviction for the purposes of enforcing any costs or damages. In the event of non-payment, the offender can be arrested for inquiry to be held as to his means. The words "and of any subsequent proceedings which may be taken against the offender under the foregoing provisions of this Act" refer to proceedings taken under s. 6 or s. 8 of the Act.

4.—Gaming—*Small Lotteries and Gaming Act*, 1956—*Housey-housey in a club.*

A club in this area wishes to run a game known as "tombola" or "housey-housey" on its premises, and has made application to the local authority for registration for this purpose under the Small Lotteries and Gaming Act, 1956. The game is played by any number of players, each of whom is given a card which has several rows of numbers printed on it. Each card has a different combination of numbers. Numbered discs are drawn from a bag and as the number of each is called, any player with that number on his card covers it with a disc. The first player to complete his card wins. The game then restarts. The players pay to take part and there are prizes for the winners.

The club is of a type which could properly be registered under the Act but would such registration (provided the conditions mentioned in s. 1 (2) were complied with) render the game not unlawful? In other words, is the game a lottery or an unlawful game?

Section 4 (5) seems to suggest that a game of chance, etc., could also be a lottery but provided the game is played in accordance with the conditions mentioned in s. 4 it is not to be deemed to be an unlawful lottery. But could a lottery which was not unlawful by virtue of s. 1 be an unlawful game if s. 4 were not complied with?

HOUSEY.

The game is unlawful in that it is a game of mere chance, and even if play is confined to the members of a club, the club can be a common gaming house (*Jenks* v. *Turpin* (1884) 13 Q.B.D. 505; 49 J.P. 20). If the club is to claim the exemption provided by s. 4 of the Small Lotteries and Gaming Act, 1956, it must comp'y with the conditions of that section. It seems that the game in this instance is simply carried on for private gain and would not be exempt. We think

the purpose of s. 4 (3) of the Act is merely to prevent action being taken against the organizers under the Betting and Lotteries Act, 1934, as under that Act various games have been held to be unlawful lotteries. We cannot see how all the conditions specified in s. 1 (2) of the 1956 Act could be applicable to housey-housey or tombola in order to allow its registration as a small lottery.

5.—Licensing—*Off-licence—Consumption of "free" samples of wine on the premises.*

An off-licence holder stocks and sells table wines for consumption off the premises. Is any offence committed if, during permitted hours, he permits interested persons to taste samples of various wines on the premises, the samples being supplied by the licensee free of charge and not being taken from bottles already sold to the consumer?

OBOR.

Answer.

This question is poised on the narrow border-line between what is lawful and what is unlawful. There seems to be no decided case on the point, although it is known that the practice has for many years been followed by some off-licence holders.

It may fairly be said that the "interested persons" mentioned by our correspondent are either customers or prospective customers: the reality of the transaction is that a sample is given as an encouragement to purchase: that consideration flows towards the licence-holder in the form of attraction to the customer of the wine which the licence-holder thereafter sells to him. So regarded, it could be held that the supply of a "free" sample along with the sale of a bottle of wine makes the supply of the sample "a transaction in the nature of a sale," and so a "sale" within the meaning of s. 154 (1) of the Licensing Act, 1953. If it were so held, the sale would be in contravention of s. 124 (1) (*a*) of the Act. Only case law can define the exact limits of the expression "a transaction in the nature of a sale."

6.—Magistrates—*Rules—Evidence of means given—Suggestion that extravagant living is the reason for non-payment—Appeal against decision to commit.*

A local authority are pressing an application before my magistrates for a ratepayer to be committed to prison for non-payment of rates after a distress warrant has been returned *nulla bona.*

It has been suggested to me that this procedure has so fallen into disuse that it really is no longer applicable and that magistrates in any event should not make a forthwith committal order even if they are satisfied that the debtor has been living beyond his means and that is what has prevented his paying his rates.

I understand that an employer's certificate will be produced showing the income of the debtor to be in the region of £700 *per annum* and I also understand that the wife is a state registered nurse and has recently obtained employment in that capacity but, owing to the geographical position, it is essential for him to run a car and employ a daily help to look after the children, in order that the wife can do this work, with the result that her net income is nil.

Under the circumstances, if the magistrates consider that "by cutting his coat to fit his cloth" the debtor could have at least made substantial payments towards his rates, is there any reason why they should not commit him forthwith to prison? If they do so commit him, is there any method for, or would there be any grounds of, appeal, other than that the magistrates acted not in accordance with the evidence?

I may state that the rates now being dealt with are three half-year's rates and there is also an application for a distress warrant in respect of the current half-year's rates which is anticipated will be returned *nulla bona* as before.

Your advice and assistance will be appreciated. MILSOR.

Answer.

The magistrates, by virtue of s. 10, Money Payments (Justices Procedure) Act, 1945, may not commit if they are satisfied that the failure to pay was not due either to the debtor's wilful refusal or to his culpable neglect. In our view, if they were satisfied that he had lived unnecessarily extravagantly, spending on other things money he might well have used to pay his rates, they could properly commit him.

Ryde (edn. of 1956) quotes at p. 853 a quarter sessions case, *Barton* v. *Wandsworth Borough Council* (1946) 39 R. & I.T. 122, as deciding that quarter sessions had no jurisdiction to entertain an appeal against such a committal. We know no ground for supposing the procedure to have fallen into disuse.

7.—National Assistance Act, 1948—*Erection of premises to let for other purposes.*

The welfare committee of a county borough council are considering erecting garages to let in the grounds of a hostel for old people, provided under the National Assistance Act, 1948. The council have resolved that all matters relating to the discharge of any functions of the council under the National Assistance Act, 1948 (except ss. 41 and 47 thereof) shall stand referred to the welfare committee. Some doubt has been expressed, whether the Act gives the welfare committee power to do this, and your opinion on this point would be appreciated. DOUBTFUL.

Answer.

In our opinion the proposal is outside the scope of the powers which can be delegated under sch. 3 to the National Assistance Act, 1948, which speaks of functions under part III of the Act.

8.—Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1)—*Golf club in form of company.*

A golf club in this area is a company limited by shares and there is no provision that every member must be a shareholder. No dividends have ever been paid since the company was formed in 1925, and, with a view to securing the benefits of the section, the shareholders have passed a resolution prohibiting the payment of any dividends in the future. Do you consider that, in the circumstances, the club is entitled to relief? If not, would your answer be the same if the company's memorandum of association was amended?

BIRDIE.

Answer.

On the facts before us, we think not; nor do we consider that the suggested alteration in the memorandum would bring it inside.

9.—Rating and Valuation—*Kiosks on promenade—No definite site let—No rateable occupation.*

In July, 1955, my council granted a licence to X containing *inter alia* the following conditions:—

1. the right to erect and maintain kiosks of such types and dimensions as the council shall approve.

2. to hold the same during the summer season (that is to say from Whit-Saturday to the last Saturday in September) in each of the years 1955–56–57–58, yielding and paying for each of the summer seasons mentioned above the sum of £700 10*s.*

3. the licensee hereby agrees with the council as follows:—

(*a*) to pay each year to the council the sum of £700 10*s.*;

(*b*) not to change the situation of any of the said kiosks except for winter storing during the continuance of this licence without the written consent of the council;

It will be noted that there is no reference to rates in the licence, the reason being that the kiosks only came into the valuation list for the first time in the current rating year.

1. In the absence of an express agreement relating to rates is the tenant liable for payment under the Poor Relief Act, 1601?

2. Apart from liability under statute the following condition appears in the licence:—"to take the site (as to the condition or suitability of which for any particular purpose no warranty is given or to be implied) in its present condition and to indemnify the corporation from and against all actions claims demands damages or expenses arising or made by reason of the user of the above sites by the licensee or of anything sold supplied or done by him in pursuance thereof." If it could be argued that in the absence of an express agreement the corporation was liable for rates, could the corporation under the foregoing clause recover the amount paid by way of rates from the licensee, particularly having regard to the inclusion of the word "demands" in the clause mentioned?

3. It will be noted that the licence to use the kiosk covers the period Whit-Saturday to the last Saturday in September. The licensee removes the kiosk entirely from the promenade on that date. Can he claim exemption from rates for those months when the kiosks are off the promenade? CABER.

Answer.

The terms upon which seaside local authorities make accommodation available for seasonal trade seem to differ from town to town. We have advised that a trader who had a kiosk or similar erection let to him on a yearly tenancy by the council was *prima facie* in rateable occupation, and that the value should be found and rates paid on the footing of a tenancy from year to year, no allowance being made for his closing the kiosk in the winter. This was on the footing that a rental expressed to be for a year would take into account the fact that no trade would be done out of season, and that nevertheless, if the tenant chose to go upon the premises out of season, he would not be a trespasser. Further, we have advised that a document expressed to be a licence might not improbably be held by the courts to be a lease creating an annual tenancy, and that such a letting might bring part II of the Landlord and Tenant Act, 1954, into operation. In the case before us, however, it looks as if X did not become the occupier of any piece of land. What has been granted to him is a right to place a chattel belonging to himself upon land belonging to the council, who do not part with its possession and control: incidentally, land not rateable (or so we suppose). If we have the facts right, it seems to us that the licensee cannot be regarded as being in rateable occupation, and that the second and third questions put to us do not arise.

10.—Rating and Valuation—*Seaside kiosks—Whether rateable—Whether void out of season.*

My council are the owners of a shore promenade. Under an agreement made in 1955, X was granted the right to erect and maintain three ice-cream kiosks on the promenade at three agreed sites. Under the agreement he had also certain rights to sell from portable trays, barrows, and tricycles on certain parts of the promenade. In the agreement there are also provisions including one in which X indemnified my council against certain eventualities. In the new valuation lists the valuation officer has raised three assessments upon these kiosks. No assessments have been previously made thereon.

Please advise:—

1. Are the sites properly rateable?

2. If rateable, who is in beneficial occupation—the council or the tenant?

3. Can the tenant claim a void allowance during the winter season when the kiosks are not open for business?

Attention is called to the following cases as to query (1):—

Weston-super-Mare B.C. v. *Valuation Officer* (LVC/132/1953).

Bournemouth Corporation v. *Peak* (1952) 45 R.E. II, 262; 45 R. & I.T.

North Riding of Yorkshire County Valuation Committee v. *Redcar Corporation* [1942] 2 All E.R. 589; 106 J.P. 11.

And upon query (2):—

See Ryde on Rating (10th edn. p. 66) and *Southport Corporation* v. *Ormskirk Union* (1894) 58 J.P. 212.

PABER.

Answer.

1. Yes.

2. The tenant, in our opinion.

3. We have had this question in relation to a variety of seasonal properties. Facts may differ, but here the man has an agreement made in 1955 which apparently holds good from year to year, *i.e.*, his tenancy is not (apparently) for a few months only. The fact that he will not be doing winter trade must obviously be reflected in the letting value (from year to year), but we have in more or less similar cases advised that the premises are not void. The man can store chattels in the kiosks, and indeed might sell from them such things as post cards, if it was worth while. Applying the analogy of *Southend on Sea Corporation* v. *White* (1900) 65 J.P. 7 and *Gage* v. *Wren* (1903) 67 J.P. 32, we do not consider him entitled to a void allowance for the period of closing.

11.—Real Property—*Leaseholder acquiring freehold by devise—Merger.*

A was the owner of a dwelling-house within the scope of the Rent Restrictions Acts. He was a single man, living in the dwelling-house with his married sister B and her husband. A died leaving a will under which the residue of his estate, which included the dwelling-house, was devised and bequeathed to A's two sisters, B and C. The sister C lives elsewhere. An assent subsequently vests the dwelling-house in the sisters B and C, upon trust for sale as tenants in common in equal shares absolutely. B claims that before his death her brother A had granted to her a tenancy of the dwelling-house and she claims the protection of the Rent Acts in respect of such tenancy.

Assuming that B can prove that she was granted a tenancy which is within the scope of the Rent Acts, would not that tenancy be extinguished as from the date the assent vested the dwelling-house in B and her sister C as tenants in common? Please quote any authorities.

C.T.J.

Answer.

At common law the leasehold would have merged in the freehold, but not in equity, since neither the devise nor the assent intended this result. *See Snow v. Boycott* (1892) 66 L.T. 762. Since s. 25 (4) of the Judicature Act, 1873, now re-enacted as s. 185 of the Law of Property Act, 1925, it seems that the tenancy, if it ever existed, is still subsisting.

12.—Road Traffic Acts—*Speed limit—Austin "pickup truck"—Used to carry passengers—Insured "private and goods."*

A is the owner of an Austin A. 40 pickup truck weighing 19 *cwts.* 76 *lbs.* and has been charged with exceeding a speed of 30 miles an hour, which is the speed specified in sch. 1 to the Road Traffic Act, 1934, as the maximum speed in relation to a vehicle of that class or description contrary to s. 10 of the Road Traffic Act, 1930, as amended by s. 2 of the Road Traffic Act, 1934.

The rear of the vehicle was empty both of goods and passengers and seating for any passengers, at the time in question, and the vehicle is registered as private and goods. It is also insured as private and goods. The vehicle is used at times to carry passengers although the seating arrangements are of a temporary nature. When used in that capacity the rear of the vehicle is covered with a canvas and tubular steel cover covering the sides and open at the back and this in fact was on the vehicle when stopped by the police.

It might be material that the alleged offence took place on September 25, 1956.

Observations are requested on whether A's vehicle is limited to 30 miles per hour at all times.

KOTIRA.

Answer.

For the purposes of sch. 1 to the Road Traffic Act, 1930, unless this vehicle is so constructed as to be a dual purpose vehicle as defined in the Motor Vehicles (Variation of Speed Limit) Regulations, 1955 (and it appears from the question not to be such a vehicle), it is a "goods vehicle" and it can never lawfully be driven at a speed exceeding 30 miles per hour.

13.—Water Rate—*Percentage of annual value—Consumer dissatisfied with percentage.*

The local authority in our area is the water authority, and water rates of premises are assessed on their rateable value. Many traders find that, since the rateable value of their shops has been doubled under the new assessments, the water rates have also been doubled although they are not, of course, consuming any more water than before. Would you please advise what action shopkeepers may take to appeal against increased water rates? Sections 27 and 40 of the Water Act, 1945, may be in point, but, if so, we are not clear under which section one should proceed. Are these sections applicable to all water authorities?

APORUM.

Answer.

See the definition of "statutory water undertakers" in s. 59 of the Act of 1945. We are not told under what powers this local authority supply water, but the query seems to suggest the Public Health Act, 1936, in which case ss. 27 and 40 of the Act of 1945 do not apply. Under s. 126 (1) of the Act of 1936, the supplying authority are to charge for domestic supplies according to the net annual value, and have a free hand to fix the poundage or percentage, so long as they do not thereby raise more money than is actually required.

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